

Education Code § 41344 (*Amended by Stats. 2002, c. 1128 (A.B. 2834), § 10.*)

(a) If, as the result of an audit or review, a local education agency is required to repay an apportionment significant audit exception, the Superintendent of Public Instruction and the Director of Finance, or their designees shall jointly establish a plan for repayment of state school funds that the local education agency received on the basis of average daily attendance, or other data, that did not comply with statutory or regulatory requirements that were conditions of the apportionments. A local education agency must request a repayment plan within 90 days of receiving the final audit report or review, within 30 days of receiving a final determination regarding an appeal pursuant to subdivision (d), or, in the absence of an appeal pursuant to subdivision (d), within 30 days of receiving a determination of a summary review pursuant to subdivision (d) of Section 41344.1. At the time the local education agency is notified, the Controller shall also be notified of the repayment plan. The repayment plan shall be established in accordance with the following:

(1) The Controller shall withhold the disallowed amount at the next principal apportionment or pursuant to paragraph (2), unless subdivision (d) or subdivision (d) of Section 41344.1 applies, in which case the disallowed amount shall be withheld, at the next principal apportionment or pursuant to paragraph (2) following the determination regarding the appeal or summary appeal. In calculating the disallowed amount, the Controller shall determine the total amount of overpayment received by the local education agency on the basis of average daily attendance, or other data, reported by the local education agency that did not comply with one or more statutory or regulatory requirements that are conditions of apportionment.

(2) If the Superintendent of Public Instruction and the Director of the Department of Finance concur that repayment of the full liability in the current fiscal year would constitute a severe financial hardship for the local agency, they may approve a repayment plan of equal annual payments over a period of up to eight years. The repayment plan shall include interest on each year's outstanding balance at the rate earned on the state's short-term pooled investment fund during that year. The Superintendent of Public Instruction and the Director of the Department of Finance shall jointly establish this repayment plan. The Controller shall withhold amounts pursuant to the repayment plan.

(3) If the Superintendent of Public Instruction and the Director of the Department of Finance do not jointly establish a repayment plan, the State Controller shall withhold the entire disallowed amount determined pursuant to paragraph (1) at the next principal apportionment.

(b) For purposes of computing average daily attendance pursuant to Section 42238.5, a local educational agency's prior fiscal year average daily attendance shall be reduced by an amount equal to any average daily attendance disallowed in the current year, by an audit or review, as defined in subdivision (e).

(c) Notwithstanding any other provision of law, this section may not be waived under any authority set forth in this code except as provided in this section or Section 41344.1.

(d) Within 60 days of the date on which a local education agency receives a final audit report resulting from an audit or review or within 30 days of receiving a determination of a summary review pursuant to subdivision (d) Section 41344.1, a

local agency may appeal a finding contained in the final report, pursuant to Section 41344.1. Within 90 days of the date on which the appeal is received by the panel, a hearing shall be held at which the local agency may present evidence or arguments if the local education agency believes that the final report contains any finding that was based on errors of fact or interpretation of law. A repayment schedule may not commence until the panel reaches a determination regarding the appeal. If the panel determines that the local agency is correct in its assertion, in whole or in part, the allowable portion of any apportionment payment that was withheld shall be paid at the next principal apportionment.

(e) As used in this section, "audit or review" means an audit conducted by the Controller's office, an annual audit conducted by a certified public accountant or a public accountant firm pursuant to Section 41020, and an audit or review conducted by a governmental agency that provided the local education agency with an opportunity to provide a written response.

Education Code § 41344.1 (*Added by Stats. 2002, c. 1128 (A.B. 2834), § 11.*)

(a) The Education Audit Appeals Panel is hereby established as a separate state agency. Its membership shall consist of the Superintendent of Public Instruction, the Director of the Department of Finance, and the Chief Executive Officer of the Fiscal Crisis and Management Assistance Team established pursuant to Section 42127.8 or their designees. The panel shall have the authority to expend funds, hire staff, make contracts, sue and be sued, and issue regulations in furtherance of its duties.

(b) The panel shall hear appeals filed pursuant to subdivision (d) of Section 41344. The Controller shall be a party to all appeals. The State Department of Education and the Department of Finance may, at their election, timely intervene as a party in any appeal. The panel shall consider audit appeals pursuant to the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), except that it may adopt regulations specifying special pleadings that shall govern audit appeals. The panel may approve settlements and make findings of fact and interpretations of law.

(c) Compliance with all legal requirements is a condition to the state's obligation to make apportionments. A condition may be deemed satisfied if the panel finds there has been compliance or substantial compliance with all legal requirements. "Substantial compliance" means nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program's purpose. A minor or inadvertent noncompliance may be grounds for a finding of substantial compliance provided that the local education agency can demonstrate it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of funding. The panel may further define "substantial compliance" by issuing regulations or through adjudicative opinions, or both. If the panel finds there has been substantial compliance, the panel may waive or reduce the reimbursement and may also order other remedial measures sufficient to induce full compliance in the future. Other remedial measures may include, but are not limited to, restoration of a reduction if full compliance is not rendered in the future, ordering special audits, and requiring special training.

(d) In addition to the normal appeal process specified above, there is hereby created a voluntary, informal, summary appeals process for noncompliant audit exceptions that clearly constitute substantial compliance as that term is defined in subdivision (c). Requests for summary review shall be made to the executive officer of the panel who may seek comment from the Department of Finance or Superintendent of Public Instruction. Summary review shall be sought within 30 days of the date on which a local education agency receives a final audit report resulting from an audit or review.

(1) If the executive officer concludes the conditions for finding substantial compliance are not clearly met or involve substantial questions of fact, the executive officer may deny the request for summary review and the appellant may pursue its claim through the normal appeal process.

(2) For appeals in which the total audit exceptions for full repayment constitute less than 150 units of average daily attendance or seven hundred fifty thousand dollars (\$750,000), whichever is less, the executive officer may order reduced reimbursement upon a finding of substantial compliance and that other remedial measures are sufficient to induce full compliance in the future.

(3) For appeals in which the total audit exceptions for full repayment meet or exceed 150 units of average daily attendance or seven hundred fifty thousand dollars (\$750,000), whichever is greater, the executive officer may propose reduced reimbursement upon a finding of substantial compliance and order other remedial measures that are sufficient to induce full compliance in the future, if he or she has the written approval of the Department of Finance and the Superintendent of Public Instruction. The executive officer shall provide the details of the proposed settlement and the rationale in writing to the Department of Finance and Superintendent of Public Instruction and allow at least 30 days for their review.

(4) The right to appeal pursuant to subdivision (d) of Section 41344 is independent of this subdivision and an appellant may pursue his or her appeal under subdivision (b) regardless of the result under this subdivision. Local education agencies that have unresolved audit appeals pursuant to subdivision (d) of Section 41344 pending on January 1, 2003, may file a request for summary review under this subdivision for a period of 60 days after January 1, 2003.